IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C.No.496/2001

Pardeep Goyal ..... Petitioner
! through: Mr.D.C.Mathur, Sr. Advocate with
Mr.Vikram S. Panwar, Advocate.

VERSUS

$ The Enforcement Directorate ..... Respondents
^ through: None.

% **D**ATE OF DECISION: 18-09-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

PRADEEP NANDRAJOG, J. (ORAL)

1. Petitioner is impleaded as an accused in a complaint filed by the Directorate of Revenue Enforcement under Section 56 of FERA read with Regulation 9 (1)(f) and Regulation 8(1) of the Foreign Exchange Regulations, 1973.

2. Petitioner seeks quashing of the prosecution on the sole ground of inordinate delay. It may be noted that except for 3 witnesses of the prosecution even pre-charge evidence has not been completed by the prosecution. Thus, charge has yet to be framed.

3. It may additionally be noted that as per the petitioner the main actor, Shri B.B.Kuttappa, impleaded as accused No.7, has

since died.

4. Before noting certain decisions on the issue as to when can a prosecution be quashed on ground of inordinate delay, relevant facts may be noted.

5. The complaint aforenoted was filed on 21.2.1986. Cognizance thereof was taken on same day. Accused were summoned for 23.4.1986. Thereafter, on various dates different persons impleaded as accused were served. Service was completed by 29.7.1987. For unexplainable reasons matter was adjourned from time to time till the year 1991 was reached.

6. Order dated 10.12.1991 gives a clue as to why the prosecution took no steps to lead pre-charge evidence. Order dated 10.12.1991 records the prayer of the accused to be supplied with documents and the response of the public prosecutor that since record was voluminous, accused can inspect the same in the office of the complainant.

7. Accused promptly carried out the necessary inspection evidenced by the fact that in no order subsequent to 10.12.1991 has it been recorded that the accused desired further inspection.

8. After 10.12.1991 matter was listed on 18.5.1992 and 6.8.1992. The matter was simply adjourned on said dates. 14.12.1992 was notified for pre-charge evidence. No witness of the prosecution was present. Matter was adjourned to 15.4.1993. On said date, once again no witness of the prosecution was

present. Matter was adjourned to 1.11.1993. Once again, no witness of the prosecution being present matter was adjourned to 8.4.1994.

9. On 8.4.1994 hearing could not be held as lawyers had suspended work. Matter was adjourned to 19.8.1994.

10. On said date accused No.7, B.B.Kuttappa did not appear. Learned Judge issued bailable warrants to secure his presence. On next date notified, i.e. 27.8.1994 it was reported that B.B.Kuttappa had died. The Public Prosecutor wanted to verify the correctness of the report submitted by the concerned SHO to the effect that B.B.Kuttappa had died.

11. Orders passed post 27.8.1994 till 6.10.1998 show that the prosecution got the matter adjourned stating that they were yet to verify whether report pertaining to B.B.Kuttappa was correct or not.

12. On 6.10.1998, a newspaper cutting dated 18.6.1994 of Hindustan Times was filed by co-accused persons to evidence that B.B.Kuttappa had died. In spite thereof, the prosecution took time to verify whether B.B.Kuttappa had died or not.

13. Further time to verify the death of Kuttappa was taken by the prosecution on 11.1.1999, 17.2.1999 and 26.7.1999.

14. On 30.11.1999, learned Metropolitan Magistrate noted that the prosecution had still not got verified whether B.B.Kuttappa

had died or not. However, in view of the newspaper cutting, learned Metropolitan Magistrate treated as correct the information that B.B.Kuttappa had died. Matter was adjourned to 19.5.2000 for prosecution evidence.

15. Once again started the story of adjournments save and except on 27.2.2001 when PW-1, Arun Sharma, Assistant Director (Enforcement) was examined. Thereafter, PW-2 was examined on 6.10.2006.

16. From a perusal of the orders passed by the learned M.M. it is apparent that a totally unprepared and ungeared prosecution was just not interested in pursuing the complaint with any sense of purpose or diligence.

17. Evidenced by the fact that nearly 5 years were consumed to verify whether B.B.Kuttappa had died or not is proof of the lackadaisical approach of the prosecution.

18. What is painful for this court is to note the stand of the prosecution in its reply filed to the aforenoted petition. In para 6 it has been pleaded as under :-

> "6. It is most respectfully submitted that if there is any delay in the matter the same is not attributable to the respondent only. Even otherwise court of Ld. ACMM, New Delhi is overburdened. Lengthy cross-examination are done. More then five thousand cases are pending before the Ld.ACMM, New Delhi and it is generally impossible for any presiding officer of the Court of ACMM, New Delhi to expeditiously dispose of these cases in view of the lengthy cross-examinations done by the defence lawyers on behalf of the accused persons. Hence the delay, if any, is on account of the fact that the judicial system as such is unable to take

that much of load as much has been burdened upon it, consequently, neither the respondents nor the Courts are to be blamed for any delay."

19. According to the prosecution delay takes place because the courts of Metropolitan Magistrates in Delhi are over burdened. That the judicial system is unable to take so much load.

20. Who is responsible for the burden?

21. Judicial pronouncements reported in various judicial reports are replete with decisions wherein complaints have been quashed on technical grounds. Further, huge volume of case law exists where complaints have been quashed on the ground that notwithstanding accused persons being absolved in departmental adjudicatory proceedings criminal prosecutions are still being pursued and that no useful purpose would be served in continuing with the criminal prosecution based on same set of facts.

22. The Directorate of Enforcement has to take a blame for the reason, without any application of mind, all and sundry complaints are being filed.

23. As in the instant case, evidenced by the order dated 10.12.1991, even documents are not filed along with the complaints and the accused persons are left to inspect the record of the Directorate of Enforcement. In the pre-charge evidence, this mirrors in the departmental witnesses either not being present or seeking adjournments on the ground that relevant record, being voluminous, was either not brought or was not traceable.

24. I hope and expect that the Directorate of Enforcement would set its house in order. The department would be fully geared before filing a complaint.

25. In the instant case, a complaint filed in the year 1986 is still languishing at pre-charge stage in the year 2007. 21 years have gone by.

26. Speedy trial has been read into Article 21 of the Constitution of India as an essential part of the fundamental right to life and liberty guaranteed under the Constitution of India.

27. Indeed, right to a speedy trial is a part of fair, just and reasonable procedure implicit in Article 21 of the Constitution of India.

28. Rather than quoting from various judicial pronouncements, where on account of delay prosecution has been quashed, I propose to index the same as under :-

S.No	**Name of Case Law**	**Offence**	**Stage**	**Delay**
1.	Rakesh Saxena Vs. State 1986 (Suppl) SCC 505	FERA	Charge	6 years
2.	Sri Nivas Gopal Vs. U.T. Of Arunachal Pradesh 1988 (Suppl.) SCC 458	304A IPC	Charge	10 years
3.	T.J.Stephen Vs. Parle Bottling Co. 1988 (Suppl.) SCC 458	Sec.5 Import & Export Control Act	Charge	26 years
4.	Moti Lal Saraf Vs. State of J & K (2006) 10 SCC 560	Prevention of Corruption Act	P.E.	26 years

5.	Mahender Lal Das Vs. State of Bihar 2002(1) SCC 149	Prevention of Corruption Act	Pre-charge	12 years
6.	Ramanand Chaudhary Vs. State of Bihar 2002 (1) SCC 153	P.C. Act	Charge	11 years
7.	Bishwanath Prasad Vs. State of Bihar 1994 Crl.L.J. 242 (SC)	P.C.Act	Charge	16 years
8.	S.G.Nain Vs. UOI 1995 (Suppl.) (4) SCC 552	P.C. Act	Charge	14 years
9.	Mansukh Lal JT 1997 (7) SC 697	P.C. Act	Charge	14 years

29. From the facts noted above it is apparent that the accused persons have not contributed to the delay. But I would be failing if I do not note the decision of the Supreme Court reported as AIR 1981 SC 641 *State of Bihar Vs. Uma Shanker* where the Supreme Court quashed a belated prosecution even when accused themselves were responsible in a large measure for the slow pace of the case.

30. The petition is allowed. I quash the proceedings pending against the petitioner pertaining to the complaint filed by the respondent, copy whereof has been annexed as Annexure-A to the petition.

31. Needless to state, the bail bond and the surety bond filed by the petitioner stand discharged.

32. LCR be returned.

33. No costs.

September 18, 2007 PRADEEP NANDRAGOJ, J.
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